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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4109

11 **JANELLE SARAH BRAGER**
12 **731 Albanese Circle**
13 **San Jose, CA 95111**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 55046**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about January 30, 2004, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 55046 to Janelle Sarah Brager (Respondent). The Pharmacy Technician
23 License expired on August 31, 2011, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

19 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
20 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
21 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
22 to the extent that the use impairs the ability of the person to conduct with safety to the public the
23 practice authorized by the license.

24 (k) The conviction of more than one misdemeanor or any felony involving the use,
25 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
28 of a licensee under this chapter.

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

9. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.”

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about September 15, 2010, in the criminal case *People v. Janelle Sarah Brager*, Case No. M54973 in Santa Cruz County Superior Court, Respondent was convicted of violating Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or Higher), a misdemeanor. The conviction was entered as follows:

a. On or about August 8, 2010, California Highway Patrol officer(s) in the Santa Cruz, CA area responding to a report found Respondent trying to drive a car on a flat tire. When the officer(s) contacted Respondent, she had blood on her hands that she explained as being the result of an injury she incurred while attempting to change the tire. Respondent exhibited signs of intoxication and had the smell of alcohol on her breath. Respondent failed Field Sobriety Testing.

1 An initial breath test detected a blood alcohol level of 0.146%. Respondent refused to provide a
2 second breath sample. She was placed under arrest on suspicion of driving under the influence.
3 Also, in the car with Respondent were her son and his male cousin, both minor children. Blood
4 was drawn from Respondent at Dominican Hospital to further establish blood alcohol content.

5 b. On or about August 17, 2010, Respondent was charged by criminal Complaint
6 in *People v. Janelle Sarah Brager*, Case No. M54973 in Santa Cruz County Superior Court, with
7 violating (1) Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol or Drugs), a
8 misdemeanor, and (2) Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or
9 Higher), a misdemeanor, and with a special allegation that Respondent was driving with a minor
10 passenger under the age of fourteen (14) during the commission of the offense

11 c. On or about September 15, 2010, Respondent pleaded *nolo contendere* to Count
12 2, violation of Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or Higher),
13 a misdemeanor. Count 1 was dismissed. Imposition of sentence was suspended in favor of a
14 conditional sentence of sixty (60) months on terms and conditions including 5 days in county jail
15 (2 days CTS), enrollment in a First Offender Drinking Driver Program, and fines and fees.

16 17 SECOND CAUSE FOR DISCIPLINE

18 (Conviction of Substantially Related Crime(s))

19 12. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
20 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
21 substantially related crime(s), in that on or about June 13, 2011, in the criminal case *People v.*
22 *Janelle Sarah Brager*, Case No. P10CRF0470 in El Dorado County Superior Court, Respondent
23 was convicted of violating both Penal Code section 273a(a) (Child Abuse and Endangerment), a
24 felony and Vehicle Code section 23152(b) (Driving with Blood Alcohol of 0.08% or Higher), a
25 misdemeanor. The conviction was entered as follows:

26 a. On or about November 7, 2010, California Highway Patrol officer(s) in the
27 Auburn/Placerville, CA area on SR-193 responding to report(s) of a collision and/or of a car off
28 the roadway found Respondent on the side of the road with side panel damage to her car and a flat

1 tire. Respondent had her five (5) year old son with her in the car. When the officer(s) contacted
2 Respondent, she gave confused and conflicting responses as to how she had come to be in that
3 location, but eventually admitted to having two collisions, the first where she side-swiped a trailer
4 attached to another vehicle, and the second where she attempted to drive her car with a flat tire it
5 incurred during the first collision and drove the car into a ditch at the side of the road.

6 b. The responding officer(s) noted that Respondent exhibited signs of intoxication
7 and administered Field Sobriety Tests (FSTs). Respondent failed the FSTs. The officer(s) took 2
8 breath samples from Respondent, which showed 0.19% and 0.18% blood alcohol, respectively.
9 Respondent was arrested, and her son was released into the custody of his grandparents.

10 c. On or about December 9, 2010, Respondent was charged in *People v. Janelle*
11 *Sarah Brager*, Case No. P10CRF0470 in El Dorado County Superior Court, with violating (1)
12 Penal Code section 273a(a) (Child Abuse and Endangerment), a felony; (2) Vehicle Code section
13 23152(a) (Driving Under the Influence of Alcohol or Drugs), a misdemeanor, and (3) Vehicle
14 Code section 23152(b) (Driving with Blood Alcohol of 0.08% or Higher), a misdemeanor, and
15 with a special allegation for having a blood alcohol content of 0.15% or more.

16 d. On or about June 13, 2011, Respondent pleaded no contest to Count 1, violation
17 of Penal Code section 273a(a) (Child Abuse and Endangerment), a felony, and Count 3, violation
18 of Vehicle Code section 23152(b) (Driving with BAC of 0.08% or Higher), a misdemeanor. She
19 also admitted the special allegation of having a blood alcohol content of 0.15% or more. Count 2
20 was dismissed. Imposition of sentence was suspended in favor of a period of formal probation of
21 four (4) years on terms and conditions including 180 days in county jail, with 90 days stayed and
22 90 days CTS, enrollment in a Trac II/Multiple Offender Drinking Driver Program, enrollment in a
23 52-week Parenting Class (with proof of attendance to the Court), and fines and fees.

24 25 THIRD CAUSE FOR DISCIPLINE

26 (Dangerous or Injurious Use of Alcohol)

27 13. Respondent is subject to discipline under section 4301(h) of the Code, in that as
28 described in paragraphs 11 and 12, Respondent used alcohol in a dangerous or injurious manner.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Dangerous or Injurious Use of Alcohol)

3 14. Respondent is subject to discipline under section 4301 (k) of the Code, in that as
4 described in paragraphs 11 and 12, Respondent was convicted of more than one misdemeanor or
5 any felony involving the use, consumption, or self-administration of alcohol..

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7 FIFTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

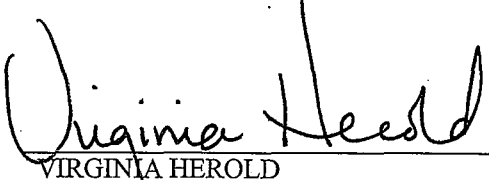
9 15. Respondent is subject to discipline under section 4301 of the Code in that, as
10 described in paragraphs 11 to 14, Respondent engaged in unprofessional conduct.

11
12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

- 15 1. Revoking or suspending Pharmacy Technician License Number TCH 55046, issued
16 to Janelle Sarah Brager (Respondent);
- 17 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
18 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 19 3. Taking such other and further action as is deemed necessary and proper.

20
21 DATED: 11/16/11

22 
23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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